

60-26208
Calendar No. 357.

66TH CONGRESS, }
2d Session. }

SENATE.

{ REPORT
No. 401.

CLAIMS GROWING OUT OF INSURRECTION IN MEXICO.

JANUARY 28, 1920.—Ordered to be printed.

U. S. Congress, Senate.

Mr. SHEPPARD, from the Committee on Military Affairs, submitted
the following

REPORT.

[To accompany H. J. Res. 80.]

The Committee on Military Affairs, to whom was referred the joint resolution (H. J. Res. 80) to correct an error in the wording of the appropriation of \$71,000 made in the act approved July 9, 1918, and to authorize the Secretary of War to pay said sum to respective parties entitled thereto, having considered the same, report thereon with a recommendation that it do pass.

The House Committee on Military Affairs favorably reported a similar measure during the session of the Sixty-fifth Congress. It is intended by this resolution to include those persons wounded as well as to apply to those killed growing out of the late insurrection in Mexico. A copy of House Report No. 1040, Sixty-fifth Congress, third session, is herewith appended and made a part of this report.

[House Report No. 1040, Sixty-fifth Congress, third session.]

The Committee on Military Affairs, to whom was referred the joint resolution (S. J. Res. 175) to correct an error in the wording of the appropriation of \$71,000 made in the act approved July 9, 1918, and to authorize the Secretary of War to pay said sum to respective parties entitled thereto, having considered the same, report thereon with a recommendation that it do pass.

The act referred to in the said Senate joint resolution reads as follows:

Persons killed on Mexican border: To enable the Secretary of War to pay to the heirs or the legal representatives of citizens of the United States killed on the American side of the line at El Paso, Texas; Douglas, Arizona, and other points as found and ascertained by the commissioners appointed pursuant to the "Joint resolution directing the Secretary of War to investigate the claims of American citizens for damages suffered within American territory and growing out of the late insurrection in Mexico," approved August ninth, nineteen hundred and twelve, the sum of \$71,000.

This provision is incorporated in the annual appropriation bill for the support of the Army, approved July 9, 1918.

In support of the measure there is attached hereto and made a part of this report letter of transmittal, together with report of commissioners authorized under the law.

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LETTER OF TRANSMITTAL.

WAR DEPARTMENT,
Washington, December 5, 1912.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: In response to Senate joint resolution No. 103, directing the Secretary of War to investigate the claims of American citizens for damages suffered within American territory and growing out of the late insurrection in Mexico, etc., I have the honor to transmit here-with reports of the commission appointed by paragraphs 27, Special Order No. 205, current series, War Department, to investigate such claims.

Similar reports have been transmitted to the President pro tempore, United States Senate.

Very respectfully,

HENRY L. STIMSON,
Secretary of War.

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CLAIMS GROWING OUT OF INSURRECTION IN MEXICO.

WASHINGTON, D. C., November 29, 1912.

The ADJUTANT GENERAL OF THE ARMY,

Washington, D. C.

SIR: The commission appointed by paragraph 27, Special Orders, No. 205, War Department, August 30, 1912, has the honor to submit herewith its report, as required under the terms of joint resolution No. 48, approved August 9, 1912, for submission to the Congress through the Secretary of War.

For reasons of convenience and completeness the resolution and order under which the commission acted are quoted in full:

JOINT RESOLUTION Directing the Secretary of War to investigate the claims of American citizens for damages suffered within American territory and growing out of the late insurrection in Mexico.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby, authorized and directed to make, or cause to be made under his direction, a full and thorough investigation of each and all claims of American citizens and of persons domiciled in the United States which may be called to his attention by claimants or their attorneys for damages for injuries to their persons or property, received by them or by those of whom claimants may be the legal representatives, within the boundaries of the United States, by means of gunshot wounds or otherwise inflicted by Mexican Federal or insurgent troops during the late insurrection in Mexico in the year nineteen hundred and eleven.

For the purpose of such investigation the Secretary of War is authorized to appoint a commission of three officers of the Army, one of whom shall be an inspector general. Such commission shall have authority to subpoena witnesses, administer oaths, and to take evidence on oath relating to any such claim and to compel the attendance of witnesses and the production of books and papers in any such proceeding by application to the district court of the United States for the district within which any session of the commission is held, which court is hereby empowered and directed to make all orders and issue all processes necessary for that purpose, and said commission shall have all the powers conferred by law upon inspectors general of the United States Army in the performance of their duties. Such commission shall report to Congress, through the Secretary of War, as soon as practicable, its findings of fact upon each and all the claims presented to it and its conclusion as to the justice and equity thereof and as to the proper amount of compensation or indemnity thereupon.

Approved, August 9, 1912.

Special Orders, }
No. 205. }

WAR DEPARTMENT,
Washington, August 30, 1912.

[Extract.]

* * * * *
27. Under the authority conferred by a joint resolution approved August 9, 1912, a commission to consist of Lieut. Col. Francis J. Kernan, adjutant general, Maj. Eli A. Helmick, inspector general, First Lieut. Aristides Moreno, Twenty-eighth Infantry, is appointed to meet in this city at the call of the senior member of the commission for the purpose of making an investigation of all claims

of American citizens and of persons domiciled in the United States for damages suffered by them within the boundaries of the United States and growing out of the insurrection in Mexico in the year 1911.

The proceedings of the commission will be conducted and its report made in accordance with the provisions of the joint resolution cited and instructions of the Secretary of War.

Lieut. Moreno is appointed special disbursing officer of the commission.

* * * * *

By order of the Secretary of War:

LEONARD WOOD,
Major General, Chief of Staff.

Official:

GEO. ANDREWS,
The Adjutant General.

Immediately after its creation the commission caused to be inserted in three issues upon alternate days in the Douglas (Ariz.) Dispatch and the El Paso (Tex.) Times the following advertisement:

NOTICE.

MEXICAN REVOLUTION DAMAGE CLAIMANTS TAKE NOTICE.

Whereas the Congress of the United States passed a joint resolution which was approved August 9, 1912, and which authorized the Secretary of War to appoint a commission of three officers of the Army to make a full and thorough investigation of each and every claim of American citizens and of persons or property within the boundaries of the United States by means of gunshot wounds or otherwise inflicted by Mexican federal or insurgent troops during the late insurrection in Mexico in the year 1911; and

Whereas a commission has been duly appointed by the Secretary of War, as above authorized, consisting of Lieut. Col. Francis J. Kernan, adjutant general, Maj. Eli A. Helmick, inspector general, and First Lieut. Aristides Moreno, Twenty-eighth Infantry; now all claimants falling within the above description are advised and requested to file their respective claims at the earliest practicable date with the said commission, at its office, room 258, War Department, Washington, D. C.

In filing claims the following rules should be observed:

1. To be in duplicate, properly dated and signed, and verified upon oath or affirmation and setting forth:

2. The age, place of birth, present residence, post-office address, and occupation of the claimant and his residence, nationality, and occupation at the time his claim had its origin.

3. The amount of the claim, the time when and place where it arose, the kind or kinds and amount of property lost, destroyed, or injured, or the kind and degree of injury if the claim is founded upon damage to person, and the facts and circumstances attending the loss or injury out of which the claim arises.

4. Whether the claimant was the sole and absolute owner of the property damaged when the damage arose and whether he is now the sole owner of the claim, or, if any other person is now interested therein, the name and address of such other person and the nature and extent of his interest and how, when, and by what means and for what consideration the transfer of interests or rights, if such was made, took place between the parties.

5. Whether the claimant, his representative, or any person interested in the claim, or any part thereof, has ever received any indemnification for the whole or part of the alleged loss or injury; and if so, the nature and amount of the indemnification and when, from whom, and by whom the same was received.

6. Documentary evidence, if submitted, should be duly authenticated, and the whole claim and its accompanying papers should be in the English language.

7. All claims hereunder must be submitted to the commission not later than October 10, 1912.

Thereafter the commission met in Washington, D. C., on September 30, and after such preliminary work as could be done in this city proceeded, about October 10, to El Paso, Tex., where sessions were held to hear evidence in the claims arising there and thereabouts. Upon the completion of these hearings the commission pro-

ceeded, on November 1, to Douglas, Ariz., where similar sessions were held to hear the evidence in support of the six claims having origin in that city. Afterwards the commission returned to El Paso, where two additional claims were presented and heard, and upon the conclusion of these cases the commission returned to Washington, D. C., where it arrived on the 14th instant. To complete the narrative of its movements it may be added that members of the commission visited Indianapolis, Ind., Cleveland, Ohio, Atlanta, Ga., and San Antonio, Tex., for the purpose of prosecuting inquiries incident to the complete investigation of the claims in question.

Twenty-four claims in all were brought to the attention of the commission. Of these, one, that of Mrs. Jennie W. Preston, had been settled to the satisfaction of the claimant, through the Mexican consul at El Paso, and was never pressed upon the commission, while another, that of Miss Frances M. Reade, appeared upon its face to be beyond the scope of the commission's authority, having arisen in Mexico, and so was not investigated.

The remaining 22 claims were investigated as fully as practicable and they divide themselves naturally into two classes. The first class embraces two cases only, those of Converse and Blatt, and they are founded upon the alleged kidnapping of the parties upon American territory and their subsequent harsh treatment. The other class is that of injuries arising from bullet wounds and resulting in death or some disability. And this latter class embraces two distinct kinds of claimants, i. e., those claiming as American citizens and those claiming as domiciled aliens.

The commission, in considering the form of its report, arrived at the conclusion that it would conduce to clearness and to brevity if the general situation out of which these claims arose and the general considerations which should govern their disposition were treated in one comprehensive report, leaving the particular facts and conclusions as to each separate claim to be embodied in separate reports, one for each claim. That plan has been followed, and this, which is the general report, is accompanied by the several individual reports, all taken together constituting the complete report of the commission as required by Congress.

It will be observed that the joint resolution requires the commission to report—

Its findings of facts * * * and its conclusions as to the justice and equity thereof and as to the proper amount of compensation or indemnity thereupon.

In the execution of this part of this task the commission has become convinced that in some cases, all the relevant facts and circumstances being duly weighed, no compensation can be justly sought from or through the Government of the United States, notwithstanding the undoubted fact that injury was received; but as this report is advisory only and not conclusive, the commission has in every case, except in those of Converse and Blatt, assessed the amount of damage believed to have been sustained. It follows from this procedure that if the conclusions of the commission as to the justice, equity, or propriety of the claims be not concurred in by the authority which must make final disposition thereof, the reports will enable a prompter settlement to be effected than might otherwise be the case.

I. THE CASES OF CONVERSE AND BLATT.

The evidence and the circumstances of these two cases are substantially the same. These claimants are both young, native-born American citizens. Early in 1911 Converse met an agent of the Mexican revolutionary party, which party was acting under the general leadership of Francisco Madero, in Los Angeles, Cal. The two struck a bargain, under which Converse was to enter the service of the revolutionary army in Mexico, to be commissioned therein, and to receive a stated salary. Pursuant to this agreement Converse entered that service and continued in it until the day of his kidnaping, February 20, 1911. He was employed chiefly as a messenger between the insurgents, operating near Juarez, Mexico, opposite El Paso, Tex., and their agents in the latter city. On one of his visits to El Paso he met Mr. Blatt, talked over the matter of his service, and took Blatt to the revolutionary junta living in El Paso. As a result Blatt went next day over into Mexico and joined the insurgent forces. He denies having made a definite bargain or received a commission, but he admits meeting the junta, and as a result he crossed into Mexico and identified himself with the forces seeking the overthrow of the Diaz Government. He was assigned to the duty of gathering supplies, by requisition or otherwise, from the neighboring country for the insurgent forces. Converse had been sent to carry correspondence to the revolutionary agents in El Paso, and Blatt got permission to accompany him. Converse avows his intention to return and rejoin the insurgents, but Blatt declares he had had enough and proposed to remain in the United States, once safely there. The two were observed and followed by Federal Mexican troops, but succeeded in crossing the Rio Grande at a point where it is the boundary; and having achieved, as they thought, a safe place, they rested near the river on the American side. There they were set upon by Mexicans—undoubtedly sent by the Federal Mexican officers—captured, and taken across the river into Mexico. They were carried as prisoners from Guadalupe, Mexico, to Juarez, Mexico, and incarcerated in the common jail for two months. In passing from Guadalupe to Juarez the road crosses once or twice into American territory. Converse called the attention of his captors to this fact while on the United States side and demanded release, but was refused. At the end of two months both prisoners were released by the personal order of President Diaz. There were circumstances of humiliation and discomfort connected with their captivity. Upon these facts each claimant demands \$50,000 by way of damages.

Mr. Converse, testifying in his own behalf, said:

A. * * * I had no intention of joining the revolution until after I got to Los Angeles. I met in Los Angeles a man who was connected with the revolution, and he offered me a position and a salary to drill the troops and to instruct the troops.

Q. Did he profess to be an agent of Orozco or Madero or those connected with this revolution?—A. He professed to be an agent of the Madero revolution; I knew that he was, through a signed commission; I afterwards identified the signature of Mr. Madero.

Q. And did you strike a bargain with him that you would become a drill-master?—A. Yes, sir. (See p. 33, testimony in Converse case.)

Mr. Blatt, testifying in his own behalf, said:

Q. When had you entered the service?—A. We went to the junta here in El Paso one evening; I met several of their emissaries here, and the next morning—we stayed that evening—and the next morning we rode in a wagon to Ysleta, which is about 12 miles down the valley—we passed it yesterday—and stayed there that day; the following morning we rode on horseback to the town of Zaragoza, Mexico, where we joined the forces there.

Q. Whose forces?—A. The Mexican forces—the revolutionists—the Maderistas.

Q. What sort of an engagement had you made with the junta here in El Paso?—A. Nothing but to go over; I made my engagement merely to go over, and did not ask anything of a reward, or what we would be paid, or anything; I just wanted to go over.

Q. What was your purpose in going over to the other side?—A. I often wonder at it now myself; that is, it was wholly for the little excitement.

Q. Were you going over there on a hunting trip?—A. No, sir; going over there to fight.

Q. Going for the purpose of joining the insurrectos, were you not?—A. Yes, sir.

Q. You did join them?—A. Yes.

Q. Did they accept your services?—A. Yes. (See testimony of Mr. Blatt, pp. 15-16, Blatt case.)

Section 9 of the act approved March 4, 1909, provides that—

Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, State, colony, district, or people, in war, by land or by sea, against any prince, State, colony, district, or people with whom the United States are at peace, shall be fined not more than \$2,000 and imprisoned not more than three years.

Considering the testimony of the claimants in connection with all the other facts and circumstances brought out in the evidence, the commission is convinced that both these claimants were engaged, at the time when their claims had their origin, in violating the neutrality laws of their own country. If this be so, they are barred from asking that Government whose laws they were violating to take upon itself the task of seeking compensation for any damage or injury which may have come to them primarily as a result of their own wrongdoing.

In the case of the *Monitor*, where a claim against the Japanese Government was in question, Mr. Bayard, Secretary of State, said:

Clearly, therefore, this department is precluded from pressing in any manner upon the attention of a foreign government a claim growing out of transactions obnoxious to the laws of the United States or possessing other features that forbid its approval and promotion by the official representative of this government. (Moore's Int. Law Digest, 6, p. 620.)

And again the same Secretary, in reference to the claim of one Pelletier against Haiti, said:

On the general question of turpitude of cause of action as barring the present claim, I am now prepared to give an emphatic, and, I trust, final decision. Even were we to concede that these outrages in Haitian waters were not within Haitian jurisdiction, I do now affirm that the claim of Pelletier against Haiti on the facts exhibited must be dropped and dropped peremptorily and immediately by the Government of the United States. "The principle of public policy," said Lord Mansfield in *Holman v. Johnston*, Cowper's Rep., 343, "is this: *Ex dolo malo non oritur actio*." No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. * * * By innumerable rulings under the Roman common law, as held by nations holding Latin traditions, and under the common law as held in England and the United States, has this principle been applied. * * *

But even if it should be thought that the acts of Converse and Blatt as shown by the evidence would not sustain an indictment

under the penal statute above cited, it must still be held that their admitted conduct estops them from asking the United States Government to press their claim upon Mexico. They were both actively engaged in the service of a revolutionary force whose avowed object was to overthrow the established government of Mexico. As armed revolutionists they took upon themselves the hazards of war. They were liable to be killed in action; and, on the other hand, they were liable to kill in action soldiers of the Republic of Mexico. These rights and liabilities could not flow from American citizenship. If slain in a fair fight, this Government would have no duty to demand redress in the premises; if they killed, in like manner, their opponents, they could not do so as American citizens primarily, but only as Mexican revolutionists. Otherwise such killing would be murder. It is plain that these claimants, having taken upon themselves the character of Mexican revolutionists, with a new set of duties, rights, and liabilities, put in abeyance for the time being at least their distinctive rights, liabilities, and duties as American citizens. They were fighting not as citizens of this country, but as Mexican insurgents, and they were pursued not as Americans, but as rebels in arms against the established Government. The pursuit should have stopped at the boundary, not because the crossing of the Rio Grande divested Converse and Blatt of their hostile and capturable qualities, but because to go further was to violate the sovereignty of a neighboring country. Crossing the river did not reinvest these claimants with any of those individual rights peculiar to American citizenship, which they had voluntarily put aside by enlisting in the Mexican revolution; on the contrary, the very character of their mission required them to cross to the soil of the United States, and in so doing they were carrying out an act of warfare against the Government of the Republic of Mexico. The circumstances of their seizure constituted a clear and a grave violation of the sovereign rights of the United States.

The commission believes their capture on American soil to have been deliberate and to have been instigated by the military authorities of Mexico, a part of whose forces were drawn up on the southern bank of the river, to receive the two captured Americans, and which, in fact, did receive and hold them immediately after those effecting the seizure had brought them to the Mexican side. The whole procedure was an international wrong done to this country; but the individuals captured were captured not as American citizens, but as active insurgents in the very act of carrying out a hostile mission. The case would have been the same if the parties captured had been native-born Mexicans instead of Americans. In either case the pursuit should have stopped at the boundary; in either case the capture on this side was internationally wrong, but in both cases the injury is a public one directed against the sovereignty of the United States. It was open to our Government to demand the release of those captured, the punishment of those involved in the capture, and such further international redress as might be deemed proper by those charged with that phase of public duty; but as to these claimants, capture was one of the fates they challenged when they embarked in their Mexican insurgent enterprise, and the time and place of their capture, while making for an offense to this Government, grounds in them no claim for pecuniary damages which this Government

should undertake to press. If they have any just claim for compensation it should be directed by them to the conscience and gratitude of the present Government of Mexico, whose cause they made their own.

The principle here set out is not novel. It was acted upon in the case of Capt. John Clark, who took out letters of marque from Uruguay and cruised against the vessels and property of Spain and Portugal upon the high seas. A part of his booty was taken by a public-owned vessel of Colombia, and his heirs came in time to press a claim growing out of this seizure before mixed commissions appointed by the United States and New Granada, Venezuela, and Ecuador, these States being a part of that Republic of Colombia which had made the original seizure. In all cases the claims were finally disallowed, and the grounds upon which this action was had were, in principle, those above outlined. One of the commission said:

I grant that the conduct of the Venezuelan squadron and the decisions of the Venezuelan prize court were unjustifiable upon any principle of international law, and that a great outrage was committed on the sovereign rights and interests of Uruguay; but what is that to the United States? Whatever losses and damages Capt. Clark sustained in the premises he sustained, not in his character as a citizen of the United States, but as an officer in the service of the Banda Oriental Republic (Uruguay), cruising under her flag, for her benefit, and against her enemies. If, therefore, the spoliations committed by the Venezuelan Navy, and sanctioned by the Venezuelan courts, entitle him to indemnification, this indemnification must be claimed by the Banda Oriental Republic, now the Republic of Uruguay, and not by the United States—the war was with Uruguay and Spain and Portugal; the United States were neutral; not so Capt. Clark. Although a native citizen of the United States, he had identified himself with one of the belligerents in violations, as I shall presently show, of the laws and treaties of his own native country. He was cruising under the Uruguay flag against the commerce of two nations with which the country of his birth was at peace. He must, therefore, abide by the consequences * * *. A party who asks for redress must present himself with clean hands. His cause of action must not be based on an offense against the very authority to whom he appeals for redress * * *. He who engages in an expedition prohibited by the laws of his country must take the consequences. He may win or he may lose. But that is his own risk; he can not, in case of loss, seek indemnity through the instrumentality of the government against which he has offended. (Moore's Int. Arbitrations, pp. 2734-2739.)

Other commissioners expressed similar views, and one of them, Mr. Findlay, in the course of his opinion, quoted from Mr. Justice Taney in *Williams v. Gibbes*, where, having reference to a claim founded on a contract to furnish advances and supplies to a military expedition fitting out against Mexico, then belonging to Spain, the justice said:

Of course it was their duty [the commission's] not to allow any claim for services rendered to Mexico or money advanced for its use by American citizens in violation of their duty to their own Government or in disobedience to its laws. For the Government would have been unmindful of its own duty to the United States if it had used its powers and influence to enforce a claim of that description, or had sanctioned it by treaty.

Col. Young's case, reported in Moore's International Arbitrations, pages 2752-2753, is almost exactly in point. Col. Young accepted a commission in the Mexican Army in its war against Spain, and was killed. The commissioners say:

Col. Young, by accepting a commission in the Mexican service and actually engaging in the war then in progress, forfeited all claim to the protection of his own Government. He lost, for the time being at least, and so far as he

was connected with that service, the character of an American citizen. A return to the United States might have restored his national character; but while he was in Mexico, engaged in her service as an officer in her army, he ceased to be a citizen of his native country and could claim none of the benefits resulting from that character.

So in Green's case, the umpire declares that—

the claimant must be considered to have been actually employed by and in the service of the Mexican Government, and pro tanto a Mexican citizen during the time of his services.

The grievance of the United States against Mexico in these cases is not that the particular persons—Converse and Blatt—should have been captured as they were, but that anybody should have been kidnapped upon our soil by agents of a foreign government.

For the reasons stated the commission does not recommend any amount as due these claimants from or through this government. The commission visited in person the scene of this kidnapping, and from this inspection, from the evidence adduced in the case, and from consulting the treaties between Mexico and the United States bearing upon the boundaries of the two countries, it is satisfied that Converse and Blatt were seized upon United States territory.

II. THE CASES ARISING IN EL PASO, TEX., AND DOUGLAS, ARIZ., FROM GUN-SHOT WOUNDS INFILCTED FROM THE MEXICAN SIDE OF THE BORDER.

To understand how these injuries were received, some general description of the situation of El Paso and Douglas and of the events of May 8, 9, and 10, 1911, at Juarez, Mexico, and of April 13 and 17, 1911, at Agua Prieta, Mexico, is necessary.

El Paso, Tex., lies directly on the Rio Grande River opposite Ciudad Juarez, Mexico. The river between these two cities is spanned by several bridges, railroad and others, and at some seasons is nearly if not quite dry. Both cities grow down close to the river banks so that between the two municipalities the distance is not great. El Paso claims some 30,000 inhabitants, and the greater number of these is to be found in the more compact part of the city and within about two miles of the dividing river. Its situation with reference to the bounding river and to Ciudad Juarez will be better understood from the map hereto attached as Appendix A. Some of the principal streets of the city will be seen to run nearly perpendicular to the river front.

On May 8, 1911, some of the subordinate leaders under Mr. Madero began an attack on Juarez, moving down under shelter of the river bank and so getting close to the heart of the city without much exposure. At the same time they thus became interposed between El Paso and Juarez in such fashion that a fire from the Federal garrison of the town, directed at the assailants along the river front, must needs be in the direction of El Paso. It is hinted by some of the attorneys that the United States, having formally warned the garrison of Juarez not to fire in the direction of United States territory—and this fact being known to the assailants—they purposely attacked the river front so as to embarrass the defense. However this may be, the defense for the better part of three days, May 8, 9, and 10, did fire in such direction as to cover the greater part of El Paso with a flight of bullets, resulting in numerous casualties.

Douglas, Ariz., and Agua Prieta, Mexico, face each other across the international boundary line, which here runs across a flat plain.

They are separated by an open strip about one-quarter of a mile wide. An assault on Agua Prieta by insurgents occurred April 13, 1911, and was made from a line near the boundary, so that in firing upon the assailants in the Federal garrison was bound to fire toward and into Douglas. Again on April 17, when the Federal force undertook to recapture Agua Prieta, the assault was directed from the southeast so that the bullets in their flight to the northwest were certain to fall into and about Douglas. On each occasion there were resulting casualties on the American side, upon which are founded six claims presented to this commission. There is appended hereto, and marked B, a map of Douglas, Ariz., which will further illustrate its inevitable exposure.

The modern high-power military rifle has a maximum range of approximately 3 miles. Upon the maps of El Paso and Douglas herewith there are drawn in red ink circles having their centers approximately near the center of the defense in Juarez and Agua Prieta, respectively. It will be seen that these circles embrace, in the case of El Paso, the greater part of the inhabited town and in the case of Douglas practically the whole city. Appended also to this report and made a part hereof is some general testimony taken by the commission and detailing the events of those days in El Paso and in Douglas when the battles upon the adjacent Mexican territory gave rise to wounds upon American soil. Afternoon papers of El Paso published on the 8th, 9th, and 10th days of May, 1911, are also appended to further illustrate, by contemporaneous reports, the happenings of those days as they relate to the subject of these claims.

The brief submitted by Coldwell and Sweeney, attorneys for the claimants, Griffiths and Chandler, is also made an appendix hereto. This brief was adopted by the other attorneys as expressing their view of the law and the reasoning applicable to all the El Paso claims in so far as its citations and its arguments are of general application.

In this brief the argument is advanced that Mexico was wholly unjustified in carrying on active warfare when its natural result would be to endanger life on our soil by the falling of bullets thereon. And the conclusion is sought to be drawn that since Mexico's action is indefensible from the standpoint of international law the damages allowed should be great, including not merely compensation but something beyond to deter for the future.

It seems plain, however, that the right of a State to defend itself is fundamental and inferior to no other. In the case now under consideration the established government was threatened and in danger. On the one hand it was fighting in self-defense for its continued existence, while on the other was a revolutionary party striving to overthrow it. The right of a State to change its government when it is alleged to be oppressive or otherwise unresponsive to the needs of the people is also a well-established dictum in the law of nations. Both parties to the conflicts at Juarez and at Agua Prieta were therefore engaged in a contest about the theoretical right of which, in an international sense, there can be no doubt. Both of these places were important to the combatants, as both lie at the gateway of railroads penetrating the country and both have custom-houses where revenue is to be collected. It was highly important

to the rebels to take and hold these towns; it was of the utmost importance to the Diaz Government, fighting for its life, not to permit this. The commission, in view of these facts, has no doubt that Mexico must be held within her sovereign rights when she fought to retain possession, as against armed rebellion, of both Juarez and Agua Prieta. If the situation as between Mexico and the United States were reversed and this Government found itself assailed by armed rebels avowing the purpose of overthrowing the established order of things, and its border cities were besieged, nobody can doubt that attack would be met by defense, let the bullets fall where they might. What we should undoubtedly claim for ourselves as right we must admit as right in our neighboring States. But when a State in the exercise of its sovereign rights of self-defense has been compelled to inflict injuries as incidental thereto upon a neighboring and friendly power, prompt expressions of regret and prompt atonement in so far as money indemnity can atone are to be expected.

It is believed that the views just expressed are in accord with our own diplomatic history, as several incidents illustrate. When the *Caroline*, in the year 1837, was attacked and destroyed in a harbor of New York State by agents of Great Britain, the case was much less urgent than at El Paso or Douglas and all the attendant circumstances less calculated to justify the territorial invasion. But in the subsequent correspondence we find the plea of self-defense as the only one, and its force in an appropriate case apparently admitted by our Government, though not in the particular case.

Mr. Webster, then Secretary of State, said of this transaction:

The President sees with pleasure that your lordship fully admits those great principles of public law applicable to cases of this kind, which this Government has expressed, and that on your part, as on ours, respect for the inviolable character of the territory of independent States is the most essential foundation of civilization. And while it is admitted on both sides that there are exceptions to this rule, he is gratified to find that your lordship admits that such exceptions must come within the limitations stated and the terms used in a former communication from this department to the British plenipotentiary here. Undoubtedly it is just that, while it is admitted that exceptions growing out of the great law of self-defense do exist, these exceptions should be confined to cases in which the "necessity of that self-defense is instant, overwhelming, and leaving no choice of means and no moment for deliberation."

Understanding these principles alike, the difference between the two Governments is only whether the facts in the case of the *Caroline* make out a case of such necessity for the purpose of self-defense.

On our side practically the same principle was asserted when Gen. Jackson, in 1819, invaded Florida, then a dependency of Spain. The ground broadly stated was that such invasion was the only practicable way to put an end effectively to the Indian depredations on that frontier.

And in reference to the Mexican boundary itself our Government has taken the position in times past that if the only effectual way to stop Indian raids upon our people and their property was to pursue them across the border into Mexico, that course would be followed, unless the Mexican Government took effective measures to prevent its soil from being made a base of operations against us and a haven of refuge in case of pursuit by our forces.

The ground upon which this position rests is simply that the right of self-defense rose superior in the particular circumstances to the right of territorial inviolability.

The commission, therefore, believes that Mexico, while justified by the extreme circumstances in fighting upon the immediate border, is bound to feel regret and make amends to those particular individuals who incidentally suffered from her action. And as to the sufferers who are American citizens, the commission believes it to be clearly the duty of their Government to urge the justice of a prompt and liberal settlement upon the Government of Mexico. It seems superfluous to make citations or undertake argument with the purpose of justifying this conclusion. The duty of Governments to see that their citizens when damaged by foreign governments should be given justice is too well established in our own diplomatic history and through the long list of international claims commissions to be now questioned. Mexico herself has impliedly admitted her liability by offering compensation, after its own investigation, in a number of these cases. These offers were rejected in all cases except one for the reason that the amount offered seemed to the claimant too small. But the fact that an attempt at settlement was thus made by the accredited agent of the Mexican Government is here cited as an acknowledgment by that Government of its liability for the injuries arising from its military operations at Juarez and Agua Prieta. In the one case actually settled—that of Mrs. Jennie M. Preston—the amount paid the claimant may be taken as in some degree a measure by which other amounts could be assessed. But in all cases the commission has endeavored to take into consideration the age, state of health, earning capacity, and degree of permanent disability, if any, in arriving at the amount of the damage assessed.

There is some evidence that the Mexican Government took the ground, in its own investigation through its consular agents, that the doctrine of contributory negligence might be invoked as going to lessen the amount of compensation, or, perhaps, to defeat the claim altogether.

There can be no doubt that many spectators on the American side were drawn by curiosity to points of advantage from which to view the conflicts on the other side. But curiosity is a human quality and not criminal, and not even censurable in many cases. The sight of a battle is one not often presented to the citizen in his own home and amidst his usual daily vocations. That he should pause to see so strange and so rare a sight, or even that he should seek an advantageous point from which to view it, is not surprising. It must be borne in mind, too, in this connection, that few if any of these people had any realizing sense of the danger to which they were exposed by flying bullets. The commission concluded, therefore, that these spectators were where they had a right to be in their own country, that they did not fully, if at all, understand their danger, and that it does not lie in the mouth of the responsible foreigner to present this phase of the matter by way of escaping or mitigating his accountability. Pretty much any person anywhere about El Paso and Douglas was exposed to danger on the days when these adjacent fights were under way, and it is too nice a question ever to be determined satisfactorily as to whether or in what degree a particular wound might be ascribed to the indulgence of curiosity. Upon this point, however, the views of the commission are not unanimous.

In regard to the claims brought before the commission by domiciled aliens, it will be seen that all have been heard as required by the

terms of the joint resolution, and the amount of damage assessed will be found for each case in the special report devoted to that case.

The commission, however, does not believe that these claims are of a class to be presented to the United States Government for settlement, or through that Government to Mexico. These claimants are not citizens of the United States. Their paramount allegiance is not to this Government. It is conceivable that the country of their origin might call them home, arm, and require them to fight against the United States. Nowhere is it suggested that the injuries out of which these claims spring are attributable to the United States Government or to acts or omissions of its agents. The United States, therefore, can not be appealed to as to the party responsible for these injuries. In what capacity, then, can this Government be called upon to entertain these claims? Evidently only as the Government owing a duty of protection to the claimants as the victims of wrongs inflicted by another nation. Upon this point it seems clear from the weight of authority that this duty of protection is reciprocal with the obligations of allegiance and service. These domiciled aliens (all but one being of Mexican origin) owe no duty of service to this Government, and such allegiance as is due from them to the United States is of a qualified and subordinate character. Their claim to compensation, if any, is upon Mexico; and the naked question presented here is whether the duty of pressing those claims upon Mexico for settlement devolves upon the country of domicile or that of citizenship. Upon this question the great weight of authority and of reason seems to this commission to be against the country of domicile and hence we feel precluded from recommending them favorably.

Some of these claimants had filed their declaration of intention to become naturalized citizens of the United States, and one has, since the injury was received, completed his naturalization and is now a citizen. But the claim relates back to the status existing at the time of the injury. The proposition, as the commission understands it, is for this Government to intervene between these domiciled aliens and (except in the case of one Chinese) their own Government for the purpose of securing justice as between those parties.

Upon the general proposition that citizenship is prerequisite to such intervention reference is made to the general practice of our State Department and to the cases cited in Moore's Digest of International Law, sections 979 and 980, volume 6, pages 628 to 636. The citations from our diplomatic correspondence, made in section 981 of the same work, are particularly apposite to these claims.

In declining to present a diplomatic claim to the Government of Austria, Mr. Marcy said:

The wrong you complain of was done more than six years before you were a citizen of the United States, and while you were a subject of the Emperor of Austria. The application you make seems to require this Government to interpose in a matter between the Austrian Government and one of its subjects. That was the practical relation when the act complained of took place. It can not, therefore, be said to be an injury done to one of our citizens, but only to a person who several years afterwards became a citizen of the United States. (Mr. Marcy, Secretary of State, Aug. 26, 1856.)

By adopting a foreigner, under any form of naturalization, as a citizen, this Government does not undertake the patronage of a claim which he may have upon the country of his original allegiance or upon any other government. To admit that he can charge it with this burden would allow him to call upon a dozen governments in succession, to each of which he might transfer his allegiance, to urge his claim. Under such rule the government supposed to be

indebted could never know when the discussion of a claim would cease. All governments are therefore interested in resisting such pretensions. (Mr. Fish, Secretary of State, May 16, 1871.)

Where a person, who was naturalized in the United States in 1874, asked for diplomatic intervention in order to obtain the restoration of his property which was embargoed in Cuba in 1871, the Department of State said: "When your alleged injuries took place you were not a citizen of the United States, and therefore, under well-established canons of international law, it is not within the province of this Government to inquire whether your property was wrongfully or rightfully taken. It would be a monstrous doctrine, which this Government would not tolerate for a moment, that a citizen of the United States who might deem himself injured by the authorities of the United States or of any State could, by transferring his allegiance to another power, confer upon these powers the right to inquire into the legality of the proceedings by which he may have been injured while a citizen." (Mr. Fish, Secretary of State, Apr. 8, 1874.)

Subsequent naturalization does not alter the international status of a claim which accrued before naturalization. (Mr. Bayard, Secretary of State, Apr. 30, 1886.)

The case of Santangelo, reported in volume 3, *Moore International Arbitrations*, is exactly in point with the Chinese case here, and if this precedent is followed the United States will refuse to urge this case as well as those of the other domiciled strangers of Mexican origin. It is true that Santangelo's injury occurred in Mexican territory, while this happened upon our soil; but in neither case is there any imputation of laches or wrongdoing upon the part of our Government, such as might fasten upon it a special obligation to see the wrong repaired.

Upon the other side of this question may be cited the cases of Jarr and Hurst, one a native of Denmark, the other of Norway, who had become domiciled in the United States and had declared their intention to become citizens of the United States. In this condition they shipped as sailors on an American vessel and the injuries of which they complained were received in the Port of Acapulco, Mexico. Under a convention which authorized the claims of American and Mexican citizens only to be considered by the commission, the claims of these parties were heard, though subsequently dismissed upon other grounds. Here it will be observed that the claims were not against the country of origin. But in any case the decision of the commission, while conclusive in those cases, appears to run against the great current of authority.

In addition to what has been said, it may be well to point out that inconvenient precedents might be made if our Government should undertake to champion the cause of domiciled strangers in a question primarily between themselves and the Government of their origin and paramount allegiance. It will hardly be maintained that these parties have the option of looking to either the Government of their domicile or that of their citizenship as they may select for protection and compensation in circumstances like these. If it is our duty as a Government to look after these damages it can not be Mexico's at the same time and in the same sense. Now, we have many American citizens domiciled in Mexico, doing business there, living there, and the number promises to increase indefinitely. Will it do for the United States to take, in these current cases, a position which may be cited in the future as throwing upon the country of their domicile the ultimate duty of protecting these citizens and by strong implication forbidding the exercise of that function to our Government?

From every point of view, then, it is believed that the United States, not being responsible for these injuries through any omissions or acts of its own, should not take upon itself the duty of settling these claims or of urging their settlement upon Mexico.

In assessing the amount of damage, the commission has endeavored to arrive at compensation only; exemplary or punitive damages being regarded as not called for in view of all the circumstances surrounding the injuries. It can never be shown with absolute certainty that these injuries were inflicted by bullets from the Mexican side; but the weight of probability is so overwhelmingly in support of that view, when all the attendant circumstances are considered, as to compel its adoption and justify our Government in acting upon it as an established fact in each of these cases. The commission visited the locality where each wound was alleged to have been received and found the place in every instance to be within the field of fire and otherwise so situated as to make the infliction of the injury easily possible.

There follows a table showing the names of claimants, nationality, amount claimed, amount assessed, and the amount recommended as being, in the opinion of the commission, justly due the claimant.

F. J. KERNAN,

Lieutenant Colonel and Adjutant General.

ELI A. HELMICK,

Major and Inspector General.

A. MORENO,

First Lieutenant, Twenty-eighth United States Infantry.

After the foregoing report had been completed, as well as all the special reports upon the particular claims therein referred to, and about 10 a. m. on November 29, Mr. Richard Brown, accompanied by his attorney, Mr. R. V. Bowden, came before the commission and asked to have his case heard, saying that all the evidence was immediately available. Accordingly, it was heard, and the special report thereon is herewith added to those already completed.

The commission tried to verify the existence of certain original affidavits said to be on file in the State Department, copies of which are herewith attached to the claimant's petition, but it was found that the originals had been forwarded to the City of Mexico.

Taking this claimant's statement of facts in his case, as set out in his petition and as amplified under oath before the commission as correct and complete, we are convinced that he has no claim which the United States should undertake to settle or to urge upon the Mexican Government for settlement. The considerations advanced for rejecting as valid the Converse and Blatt claims apply here. The original capture and detention by Mexican Federal authorities of this claimant at Guadalupe, Mexico, was entirely justified under the laws of war. The claimant had no credentials upon his person to exempt him from capture. He wore a brassard, but any spy or enemy may resort to such a ruse, and it is by no means conclusive proof of the party being what he may claim to be. To hold otherwise would put a combatant wholly at the mercy of an enemy who saw fit to assume, the better to carry out a hostile purpose, any innocent garb and character. The fact that the claimant was unarmed is unimportant;

the fact that he was carrying letters from the public enemy was circumstances so suspicious as alone to justify his arrest and a full investigation into his character and present purposes.

That he was subjected to harsh treatment may excite sympathy in view of the humanitarian motives under which he was acting in Mexico, but those who enter a foreign country must always run some risk of finding in the customs, judicial and otherwise, of that country many things unlike what they are accustomed to expect at home. The fare and the filth of the jails may be deplorable, but it was the jail of the country, in which native Mexicans as well as foreigners were alike imprisoned.

Much emphasis is laid upon the fact that in carrying this prisoner from Guadalupe to Juarez the rurales passed along a road which at times wanders over the border and pursues for short distances its route upon American soil. Let it be conceded that for armed Mexicans to cross into our territory without the permission of our Government is to affront our sovereignty, it is still the fact that the wrong is a public one, and that it does not per se ground in this claimant a claim for damages. The public wrong would be the same if the armed party had carried no prisoner with it. By undertaking a horseback journey of 80 miles alone and without proper credentials, through the theater of hostile operations, and bearing letters of insurrecto origin, this claimant opened the way for his own arrest and detention until those who held him were fully satisfied of his conduct and purposes, and this commission does not believe the Government of the United States rests under any obligation to further consider his claim. If compensation may be thought due him, it should arise, not as an international obligation, but as a debt of gratitude and good conscience from the present Government of Mexico to Mr. Brown because of his services in behalf of the forces and the people of that country.

F. J. KERNAN,
Lieutenant Colonel and Adjutant General.

ELI A. HELMICK,
Major and Inspector General.

A. MORENO,
First Lieutenant, Twenty-eighth United States Infantry.

ADENDUM TO CASE OF WONG KONG.

In this case the commission recognized a difference in the facts as compared with the other cases involving domiciled Mexican citizens. It presented a situation where not only were the American and Mexican Governments concerned, but China as well. The claimant, Wong Kong, long before the commission was created, had returned to his native land and was residing there during this investigation and since. If the United States, through acts of its agents or its people, had been in any way responsible for this man's injury, its duty to make reparation would be plain; but since the damage was due to acts committed by Mexicans and originating in Mexican territory, the commission was of the opinion that this Government would have discharged its full duty in the premises if, after ascertaining the facts as has been done, they were brought to the attention

of the Chinese Government. There was no doubt about the claimant's injury or of his entire innocence in respect thereto; but the commission believes that the duty of seeking indemnity for Wong Kong's wrong rests primarily upon the country of his citizenship and allegiance and present residence rather than upon the country in which he happened to have received his injury, but to which no direct responsibility is imputed.

F. J. KERNAN,
Adjutant General, for the Commission.

Statement showing the claims examined by the commission organized pursuant to joint resolution of Congress, approved Aug. 9, 1912.

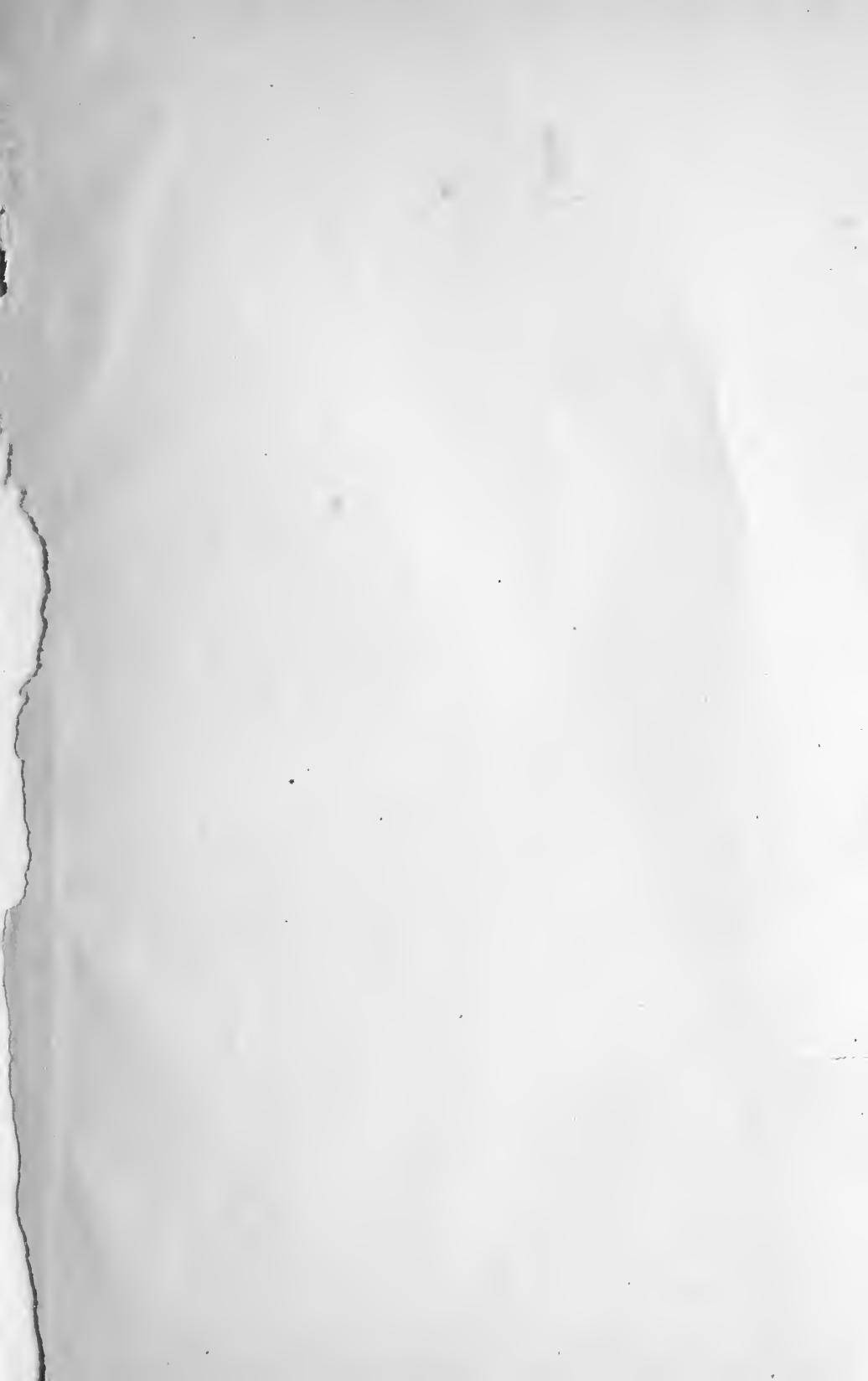
Report No.	Name and nationality.	Nature of claim.	Date and place.	Amount claimed.	Amount of damage assessed by the commission.	Amount of indemnity recommended by the commission.
1	Lawrence F. Converse, American.	Kidnaping in United States territory and detention in Mexico.	Tornillo, Tex., Feb. 20, 1912.	\$50,000.00	Nothing.	Nothing.
2	Edward M. Blatt, American.	.....do.....	El Paso, Tex., May 9, 1911.	50,000.00	Nothing.	Nothing.
3	Adolfo Varela, American.	Gunshot wound to daughter.	El Paso, Tex., May 8, 1911.	15,000.00	\$3,000.00	\$3,000.00
4	Virginia Moorhead, American.	Gunshot wound through body.	El Paso, Tex., May 9, 1911.	15,000.00	3,000.00	3,000.00
5	Abundio Soto, American.	Gunshot wound to wife.	El Paso, Tex., May 9, 1911.	6,000.00	4,000.00	4,000.00
6	Edwin G. Heaton, American.	Gunshot wound through leg.	El Paso, Tex., May 8, 1911.	10,614.78	2,000.00	2,000.00
7	Celia Griffiths, American.	Death of husband by gunshot wound.	.....do.....	50,000.00	15,000.00	\$15,000.00
8	A. R. Chandler, American.	Death of son by gunshot wound.	.....do.....	50,000.00	12,000.00	\$12,000.00
9	Rita Garcia, Mexican.	Death of husband by gunshot wound.	.....do.....	25,000.00	6,500.00	Nothing.
10	Francisco Portillo, Mexican.	Gunshot wound through arm.	El Paso, Tex., May 10, 1911.	15,000.00	2,000.00	Nothing.
11	Evarista Alarcon, Mexican.	Death of husband by gunshot wound.	El Paso, Tex., May 9, 1911.	40,000.00	6,500.00	Nothing.
12	Isabel Lara de Garcia, Mexican.	Death of daughter by gunshot wound.	El Paso, Tex., May 10, 1911.	12,000.00	6,500.00	Nothing.
13	Francisca Arredondo (Encarnacion Arredondo), Mexican.	Gunshot wound to Francisca Arredondo.	El Paso, Tex., May 9, 1911.	25,000.00	3,000.00	Nothing.
14	Dolores Dominguez, Mexican.	Death of brother by gunshot wound.	El Paso, Tex., May 10, 1911.	20,000.00	6,500.00	Nothing.
15	Barnardino Hernandez, Mexican.	Gunshot wound through hand and arm.	El Paso, Tex., May 9, 1911.	20,000.00	4,000.00	Nothing.
16	Wong Kong, Chinese.	Gunshot wound through jaw.	El Paso, Tex., May 10, 1911.	20,000.00	5,000.00	Nothing.
17	Emma Larson, American.	Personal injuries....	Douglas, Ariz., Apr. 17, 1911.	2,500.00	1,000.00	1,000.00
18	Elmer E. Crowe, American.	Gunshot wound through body.	Douglas, Ariz., Apr. 13, 1911.	20,000.00	5,000.00	5,000.00
19	Francis F. Williams, American.	.....do.....	Douglas, Ariz., Apr. 17, 1911.	50,000.00	5,000.00	5,000.00
20	John W. Keate, American.	Gunshot wound through foot.	.....do.....	5,000.00	4,000.00	4,000.00
21	Joseph W. Harrington, American.	Death of brother by gunshot wound.	Douglas, Ariz., Apr. 13, 1911.	30,000.00	15,000.00	\$15,000.00
22	William R. White, American.	Gunshot wound through leg.	.....do.....	50,000.00	2,000.00	2,000.00
				581,114.78	111,000.00	71,000.00

¹ \$32,000 recommended by one member.

² \$22,000 recommended by one member.

³ \$25,000 recommended by one member.





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